

2013 DRAFTING REQUEST

Bill

Received:	1/11/2013	Received By:	agary
Wanted:	As time permits	Same as LRB:	
For:	Administration-Budget	By/Representing:	Byrnes
May Contact:		Drafter:	agary
Subject:	Transportation - highways Transportation - other	Addl. Drafters:	
		Extra Copies:	EVM

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

DOA:.....Byrnes, BB0358 -

Topic:

Expand flood damage aids appropriation to cover other disasters

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 1/14/2013			_____			
/1	agary 1/18/2013	jdyer 1/15/2013	jmurphy 1/15/2013	_____	srose 1/15/2013		State S&L
/2	agary 1/26/2013	jdyer 1/18/2013	phenry 1/18/2013	_____	srose 1/18/2013		State S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	agary 2/4/2013	jdye 1/28/2013	rschluet 1/28/2013	_____	mbarman 1/28/2013		State S&L
/4		jdye 2/4/2013	rschluet 2/4/2013	_____	lparisi 2/4/2013		State S&L

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 1/11/2013 Received By: agary
Wanted: As time permits Same as LRB:
For: Administration-Budget By/Representing: Byrnes
May Contact: Drafter: agary
Subject: Transportation - highways Addl. Drafters:
Transportation - other Extra Copies: EVM

Submit via email: YES
Requester's email:
Carbon copy (CC) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

DOA:.....Byrnes, BB0358 -

Topic:

Expand flood damage aids appropriation to cover other disasters

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 1/14/2013	4 2/4 jld					
/1	agary 1/18/2013	jdye 1/15/2013	jmurphy 1/15/2013		srose 1/15/2013		State S&L
/2	agary 1/26/2013	jdye 1/18/2013	phenry 1/18/2013		srose 1/18/2013		State S&L

2/4/13

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3		jdye 1/28/2013	rschluet 1/28/2013	_____ _____	mbarman 1/28/2013		State S&L

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 1/11/2013 Received By: agary
Wanted: As time permits Same as LRB:
For: Administration-Budget By/Representing: Byrnes
May Contact: Drafter: agary
Subject: Transportation - highways Addl. Drafters:
Transportation - other Extra Copies: EVM

Submit via email: YES
Requester's email:
Carbon copy (CC) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

DOA:.....Byrnes, BB0358 -

Topic:

Expand flood damage aids appropriation to cover other disasters

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 1/14/2013	3/28 jld		_____ _____			
/1	agary 1/18/2013	jdyer 1/15/2013	jmurphy 1/15/2013	_____ _____	srose 1/15/2013		State S&L
/2		jdyer 1/18/2013	phenry 1/18/2013	_____ _____	srose 1/18/2013		State S&L

12/8/13

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 1/11/2013 Received By: agary
Wanted: As time permits Same as LRB:
For: Administration-Budget By/Representing: Byrnes
May Contact: Drafter: agary
Subject: Transportation - highways Addl. Drafters:
Transportation - other Extra Copies: EVM

Submit via email: YES
Requester's email:
Carbon copy (CC) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

DOA:.....Byrnes, BB0358 -

Topic:

Expand flood damage aids appropriation to cover other disasters

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 1/14/2013	1/2 1/18 jld	1/18 ph	gk ph			
/1		jdye 1/15/2013	jmurphy 1/15/2013		srose 1/15/2013		State S&L

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 1/11/2013 Received By: agary
Wanted: As time permits Same as LRB:
For: Administration-Budget By/Representing: Byrnes
May Contact: Drafter: agary
Subject: Transportation - highways Addl. Drafters:
Transportation - other Extra Copies: EVM

Submit via email: YES
Requester's email:
Carbon copy (CC) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

DOA:.....Byrnes, BB0358 -

Topic:

Expand flood damage aids appropriation to cover other disasters

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/? agary

1/15 jld

Jim
1/15/13

Self

FE Sent For:

<END>

Gary, Aaron

From: Hanaman, Cathlene
Sent: Friday, January 11, 2013 10:43 AM
To: Gary, Aaron; Mueller, Eric
Subject: FW: Statutory Language Drafting Request - BB0358

From: Tyler.Byrnes@Wisconsin.gov [mailto:Tyler.Byrnes@Wisconsin.gov]
Sent: Friday, January 11, 2013 10:41 AM
To: Hanaman, Cathlene
Cc: Frederick, Caitlin - DOA; Byrnes, Tyler - DOA; Thornton, Scott - DOA
Subject: Statutory Language Drafting Request - BB0358

Biennial Budget: 2013-15

DOA Tracking Code: BB0358

Topic: Expand Flood Damage Aids Appropriation to Cover Other Disasters

SBO Team: TLGED

SBO Analyst: Byrnes, Tyler - DOA
Phone: (608) 266-1039
E-mail: Tyler.Byrnes@Wisconsin.gov

Agency Acronym: WisDOT

Agency Number: 395

Priority: High

Intent:

Please prepare a draft that makes the following changes to the Department of Transportation's flood damage aids, state funds appropriation under s. 20.395(1)(fs) and the language governing expenditures from that appropriation in s. 86.34.

Generally, these changes should allow funds to be expended for road damage that results from any disaster and should also cover damage done to roads by disaster response. Additionally, expenditures from this appropriation greater than \$1,000,000 should be subject to approval by the Governor. Specific changes are as follows:

1. Change the title of appropriation s.20.395(1)(fs) to "Disaster damage aids, state funds"
2. In s. 86.34(1)(a), change "flood" to "external cause or by any person acting under the direction or approval of, or permit issued by, any state governmental authority and in response to a natural disaster or catastrophic failure from an external cause"
3. Create an additional section under s. 86.34(1), defining "Catastrophic Failure from an external cause" as the sudden failure of a major element or segment of the highway system due to an external cause. Please indicate that "Catastrophic failure from an external cause" does not include any failure primarily attributable to gradual and progressive deterioration or lack of proper maintenance.
4. Please amend s. 86.34(2) to read "The department shall make such investigation as it deems necessary and within 6 months from the date of filing the petition shall make its determination as to the granting of aid, the amount thereof, and the conditions under which it is granted. In making its determination the

department shall cause an estimate to be made of the cost of repairing or replacing the damaged or destroyed facilities to standards and efficiency similar to those existing immediately before the damage or destruction, and also an estimate of the cost of reconstructing the facilities to a higher type or improving any such facilities if determined to be warranted and advisable. Except as provided in sub. (2m), the amount of aid payable for damage caused by a natural disaster or catastrophic failure shall be three-fourths of the cost of repair or replacement to standards similar to those previously existing, plus 50% of the increased cost of the reconstruction to a higher type or the improvement of any of the facilities. The department may award grants payable for damage caused solely by a person acting under the direction or approval of, or permit issued by, any state governmental authority and in response to a natural disaster or catastrophic failure from an external cause, but the amount of aid payable for such damage shall be 70% of the cost of repair or replacement to standards similar to those existing immediately before the damage or destruction. The department may revise estimates on the basis of additional facts. The county, town, village or city shall pay the remainder of the cost not allowed as aid, but this shall not invalidate any other provision of the statutes whereby the cost may be shared by the county and the town, village or city."

5. Please create an approval mechanism in ch. 86.34(2), similar to the mechanism for approval by the governor of the creation of attorney positions.

Attachments: False

Please send completed drafts to statlanguage@wisapps.wi.gov



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1109/1

ARG: g...

1n
1/14
D-Note *jld*

DOA:.....Byrnes, BB0358 – Expand flood damage aids appropriation to cover other disasters

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

✓

don't gen

1

AN ACT ...; relating to: the budget. *✓*

Analysis by the Legislative Reference Bureau

TRANSPORTATION[✓]

HIGHWAYS[✓]

Under current law, if a highway or bridge that is not on the state trunk highway system (highway)[✓] is damaged by flood, the county or municipality having jurisdiction over the highway may petition DOT[✓] for payment of flood damage aid. Upon receipt of a petition, DOT must make an investigation and determine whether to grant aid, the amount of the aid, and the conditions under which aid is granted.[✓] In making this determination, DOT must estimate the cost of repairing or replacing the facilities damaged or destroyed by the flood and must also estimate the cost of reconstructing improved facilities if warranted. The amount of aid paid by DOT is 75[✓] percent of the repair or replacement cost and, if reconstructing improved facilities is warranted, an additional 50[✓] percent of the increased cost resulting from the improvement. However, if DOT's estimate of the cost of repair or improvement of the facilities is \$15,000 or less,[✓] DOT must offer the petitioner an amount of aid equal to 75[✓] percent of the total amount of DOT's cost estimate. Unless aid is payable based on DOT's cost estimate, DOT pays aid only after the county or municipality presents to DOT, and DOT approves, certified cost statements for the repair or improvement of the facilities. Flood damage aid payments are made by DOT from a sum sufficient appropriation from the transportation fund.[✓]

This bill allows DOT to use this process to pay aid for[✓] highway damage caused by any disaster, not just floods. Under the bill, a "disaster" is defined as any of the following: 1) a severe storm, flood, fire, tornado, mudslide, or other natural event external to a highway;[✓] 2) the sudden failure of a major element or segment of the highway system due to a cause that is external to a highway;[✓] or 3) an event caused by any person acting under the direction or approval of, or permit issued by, any state governmental authority and in response to an event described in item 1) or 2), above. However, for damage caused by a disaster described in item 3), above, the amount of aid paid by DOT is 70[✓] percent, rather than 75 percent, of the facilities[✓] repair or replacement cost and no additional payment is available for the reconstruction of improved facilities. The bill also prohibits DOT from paying disaster damage aid in excess of \$1,000,000[✓] in connection with disaster damage resulting from a single disaster, unless the payment of aid is approved by the governor. ✓

*

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 SECTION 1. 20.395 (1) (fs)[✓] of the statutes is amended to read:
- 2 20.395 (1) (fs) *Flood Disaster damage aids, state funds.* A sum sufficient to
- 3 make ~~flood~~ [✓]disaster damage aid payments under s. 86.34.

History: 1971 c. 40 s. 93; 1971 c. 42, 107; 1971 c. 125 ss. 122 to 137, 522 (1); 1971 c. 197, 211, 215, 307; 1973 c. 90, 142, 243, 333, 336; 1975 c. 39; 1975 c. 163 s. 16; 1975 c. 200, 224, 270, 288, 340, 422; 1977 c. 29, 377, 418; 1979 c. 34 ss. 322e to 420, 574, 575; 1979 c. 221; 1981 c. 20 ss. 238 to 300, 2202 (51) (c), (e); 1981 c. 165, 234; 1981 c. 314 s. 146; 1981 c. 347 s. 80; 1981 c. 362; 1983 a. 27 ss. 270g to 315, 2202 (20); 1983 a. 243; 1985 a. 29 ss. 357 to 402, 3202 (51) (a); 1985 a. 65, 76, 341; 1987 a. 27, 137, 349, 369, 399, 403; 1989 a. 31, 56; 1991 a. 39, 104, 239, 269; 1993 a. 16, 285, 354, 437; 1995 a. 27, 113, 201, 338, 445; 1997 a. 27, 35, 135, 237, 255; 1999 a. 9, 109, 146, 167, 185; 2001 a. 16, 104, 109; 2003 a. 33, 64, 139, 220, 320; 2005 a. 25, 319, 335; 2007 a. 20, 42; 2009 a. 28, 224, 226, 276; 2011 a. 32, 257; 2011 a. 260 s. 80; s. 13.92 (2) (i).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

- 4 SECTION 2. 83.015 (2) (b)[✓] of the statutes is amended to read:
- 5 83.015 (2) (b) In any county with a highway commissioner appointed under s.
- 6 83.01 (1) (b) or (c), the county highway committee shall be only a policy-making body
- 7 determining the broad outlines and principles governing administration and the
- 8 county highway commissioner shall have the administrative powers and duties
- 9 prescribed for the county highway committee under par. (a), sub. (3) (a) and ss.
- 10 27.065 (4) (b) and (13), 32.05 (1) (a), 82.08, 83.01 (6), 83.013, 83.018, 83.025 (1) and
- 11 (3), 83.026, 83.035, 83.04, 83.05 (1), 83.07 to 83.09, 83.12, 83.14 (6), 83.17, 83.18,

83.42 (3) and (4), 84.01 (5), 84.06 (3), 84.07 (1) and (2), 84.09 (1), (3) (a) to (c) and (4),
84.10 (1), 86.04 (1) and (2), 86.07 (2), 86.19 (3), 86.34 (1) (1m), 114.33 (5), 349.07 (2),
349.11 (4) and (10) and 349.15 (2). No statutory power, duty or function specified
elsewhere for the county highway commissioner may be deemed impliedly repealed
for the sole reason that reference to it has been omitted in this paragraph.

History: 1971 c. 211 s. 124; 1977 c. 29 ss. 915, 1654 (8) (c); 1979 c. 110, 147; 1985 a. 29; 1985 a. 223 ss. 2, 5; 1987 a. 27; 1989 a. 56 s. 258; 1997 a. 27; 2003 a. 214.

SECTION 3. 86.34 (title) of the statutes is amended to read:

86.34 (title) Flood Disaster damage aids.

History: 1971 c. 125 s. 522 (1); 1973 c. 333 s. 201w; 1977 c. 29 ss. 981, 1654 (8) (c); 1979 c. 34 s. 2102 (52) (a); 1979 c. 110 s. 60 (12); 1981 c. 20; 1985 a. 29 s. 3202 (51); 1987 a. 137 s. 6; 1993 a. 16, 437.

SECTION 4. 86.34 (1) of the statutes is renumbered 86.34 (1m), and 86.34 (1m)

(a) and (b), as renumbered, are amended to read:

86.34 (1m) (a) When any public highway, street, alley or bridge not on the state
trunk highway system is damaged by flood a disaster, the county highway
committee, or the governing body of the municipality having jurisdiction over the
maintenance thereof ^{of} ~~the highway~~, may adopt a petition for aid under this section and
file a certified copy thereof of the petition with the department. To be eligible for aid
the petition shall be filed not later than 2 months after the occurrence of the flood
disaster damage, except as provided in par. (b). All such petitions shall state the
dates on which the flood disaster damage occurred and as nearly as practical state
the location, nature, and extent of the damage.

(b) The department may extend the filing deadline under par. (a) if it appears
reasonably likely that federal disaster aid may be forthcoming or when widespread
or continuous flooding disaster damage makes an evaluation of flood damage
difficult.

History: 1971 c. 125 s. 522 (1); 1973 c. 333 s. 201w; 1977 c. 29 ss. 981, 1654 (8) (c); 1979 c. 34 s. 2102 (52) (a); 1979 c. 110 s. 60 (12); 1981 c. 20; 1985 a. 29 s. 3202 (51); 1987 a. 137 s. 6; 1993 a. 16, 437.

SECTION 5. 86.34 (1g) of the statutes is created to read:

86.34 (1g) In this section:✓

(a) "Catastrophic highway failure"✓ means the sudden failure of a major element or segment of the highway system due to a cause that is external to a highway, but does not include any failure primarily attributable to gradual and progressive deterioration or lack of proper maintenance of a highway.✓

(b) "Disaster"✓ means any of the following:

1. A severe storm, flood, fire, tornado, mudslide, or other natural event external to a highway or a catastrophic highway failure.✓

2. An event caused by any person acting under the direction or approval of, or permit issued by, any state governmental authority and in response to an event described in subd. 1.✓

(c) "Highway"✓ means any public highway, street, alley, or bridge not on the state trunk highway system.✓

SECTION 6. 86.34 (2)✓ of the statutes is amended to read:

86.34 (2) The department shall make such investigation as it deems necessary and within 6 months from the date of filing the petition shall make its determination as to the granting of aid, the amount thereof, and the conditions under which it is granted. In making its determination the department shall cause an estimate to be made of the cost of repairing or replacing the facilities damaged or destroyed by the flood to standards and efficiency similar to those previously existing immediately before the damage or destruction✓, and also an estimate of the cost of reconstructing the facilities to a higher type or improving any such facilities if determined to be warranted and advisable. Except as provided in sub. subs. (2m)✓ and (6), the amount of aid payable for damage caused by a disaster described in sub. (1g) (b) 1.✓ shall be three-fourths 75 percent✓ of the cost of repair or replacement to standards similar to

1 those previously existing immediately before the damage or destruction,[✓] plus 50%
2 50 percent[✓] of the increased cost of the reconstruction to a higher type or the
3 improvement of any of the facilities. Except as provided in subs. (2m)[✓] and (6)[✓], the
4 amount of aid payable for damage caused by a disaster described in sub. (1g) (b) 2.[✓]
5 shall be 70 percent[✓] of the cost of repair or replacement to standards similar to those
6 existing immediately before the damage or destruction. The department may revise
7 estimates on the basis of additional facts. The county, town, village, or city shall pay
8 the remainder of the cost not allowed as aid, but this shall not invalidate any other
9 provision of the statutes whereby the cost may be shared by the county and the town,
10 village, or city.

History: 1971 c. 125 s. 522 (1); 1973 c. 333 s. 201w; 1977 c. 29 ss. 981, 1654 (8) (c); 1979 c. 34 s. 2102 (52) (a); 1979 c. 110 s. 60 (12); 1981 c. 20; 1985 a. 29 s. 3202 (51); 1987 a. 137 s. 6; 1993 a. 16, 437.

11 **SECTION 7.** 86.34 (2m) of the statutes is amended to read:

12 **86.34 (2m)** ~~If~~ Subject to sub. (6), if the department's estimate under sub. (2) of
13 the cost of repair or improvement of the facilities determined by the department to
14 be eligible for aid is \$15,000 or less, the department shall offer the petitioner an
15 amount of aid equal to ~~75%~~[✓] 75 percent of the total amount of the department's
16 estimate for damage caused by a disaster described in sub. (1g) (b) 1.[✓] or 70 percent[✓]
17 of the total amount of the department's estimate for damage caused by a disaster
18 described in sub. (1g) (b) 2.[✓] If the petitioner accepts aid under this subsection, the
19 aid shall be paid to the petitioner or, subject to sub. (5), the county, and no other form
20 of aid is available under this section for the repair or improvement of such facilities.

History: 1971 c. 125 s. 522 (1); 1973 c. 333 s. 201w; 1977 c. 29 ss. 981, 1654 (8) (c); 1979 c. 34 s. 2102 (52) (a); 1979 c. 110 s. 60 (12); 1981 c. 20; 1985 a. 29 s. 3202 (51); 1987 a. 137 s. 6; 1993 a. 16, 437.

21 **SECTION 8.** 86.34 (6) of the statutes is created to read:

1 86.34 (6) The department may not pay aid under this section in excess of
2 \$1,000,000, in connection with disaster damage resulting from a single disaster,
3 unless the payment of aid is approved by the governor.

4 **SECTION 9345. Initial applicability; Transportation.**

5 (1) DISASTER AIDS. The treatment of sections 20.395 (1) (fs), 83.015 (2) (b), 86.34
6 (title), (1), (1g), (2), (2m), and (6) of the statutes first applies to disasters, as defined
7 in section 86.34 (1g) (b) of the statutes, as created by this act, that occur on the
8 effective date of this subsection.

9 (END)

J-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1109/1dn

ARG:.....

date

jld

ATTN: Tyler Byrnes

I had some difficulty working through the drafting instructions, which predominantly consist of suggested statutory language. In tailoring the suggested language to our drafting conventions and the other provisions of s. 86.34, stats., I had to make some assumptions as to your intent. Please review the attached draft carefully to ensure that it is consistent with your intent.

Can you tell me what is intended by the term "state governmental authority" in created s. 86.34 (1g) (b) 2.? I would like to use another term, if possible, but wasn't sure which entities (presumably state agencies) you had in mind here.

The definition of "highway" in created s. 86.34 (1g) (c) tracks the language in s. 86.34 (1) (a), stats., although this language is somewhat outdated. Would you prefer to cross-reference the definition in s. 340.01 (22), stats., or rely on the definition in s. 990.01 (12), stats., both of which include bridges?

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1109/1dn
ARG:jld:jm

January 15, 2013

ATTN: Tyler Byrnes

I had some difficulty working through the drafting instructions, which predominantly consist of suggested statutory language. In tailoring the suggested language to our drafting conventions and the other provisions of s. 86.34, stats., I had to make some assumptions as to your intent. Please review the attached draft carefully to ensure that it is consistent with your intent.

Can you tell me what is intended by the term "state governmental authority" in created s. 86.34 (1g) (b) 2.? I would like to use another term, if possible, but wasn't sure which entities (presumably state agencies) you had in mind here.

The definition of "highway" in created s. 86.34 (1g) (c) tracks the language in s. 86.34 (1) (a), stats., although this language is somewhat outdated. Would you prefer to cross-reference the definition in s. 340.01 (22), stats., or rely on the definition in s. 990.01 (12), stats., both of which include bridges?

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

Gary, Aaron

From: Byrnes, Tyler - DOA <Tyler.Byrnes@wisconsin.gov>
Sent: Tuesday, January 15, 2013 3:55 PM
To: Gary, Aaron
Cc: Frederick, Caitlin - DOA
Subject: LRB-1109/1 - Flood Damage Aids

Aaron,

In response to the drafters note along with LRB-1109/1

Instead of "state governmental authority", can you insert language specifying that this is damage done by a state agency, federal agency, local political subdivision or an agent acting on their behalf, i.e. a private contractor?

With respect to the definition of highway, could you reference s. 340.01 (22), stats., for both the new language in s. 86.34 (1g) (c), stats., and the existing language under s. 86.34 (1) (a), stats.

Thanks,

Tyler



State of Wisconsin
2013 - 2014 LEGISLATURE

in
1/18



LRB-1109/4 2
ARG:jld:jm

RMR

DOA:.....Byrnes, BB0358 – Expand flood damage aids appropriation to cover other disasters

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

pwf ✓

✓ don't gen
1 AN ACT ...; relating to: the budget. ✓

Analysis by the Legislative Reference Bureau

TRANSPORTATION

HIGHWAYS

Under current law, if a highway or bridge that is not on the state trunk highway system (highway) is damaged by flood, the county or municipality having jurisdiction over the highway may petition DOT for payment of flood damage aid. Upon receipt of a petition, DOT must make an investigation and determine whether to grant aid, the amount of the aid, and the conditions under which aid is granted. In making this determination, DOT must estimate the cost of repairing or replacing the facilities damaged or destroyed by the flood and must also estimate the cost of reconstructing improved facilities if warranted. The amount of aid paid by DOT is 75 percent of the repair or replacement cost and, if reconstructing improved facilities is warranted, an additional 50 percent of the increased cost resulting from the improvement. However, if DOT's estimate of the cost of repair or improvement of the facilities is \$15,000 or less, DOT must offer the petitioner an amount of aid equal to 75 percent of the total amount of DOT's cost estimate. Unless aid is payable based on DOT's cost estimate, DOT pays aid only after the county or municipality presents to DOT, and DOT approves, certified cost statements for the repair or improvement of the facilities. Flood damage aid payments are made by DOT from a sum sufficient appropriation from the transportation fund.

governmental unit or

This bill allows DOT to use this process to pay aid for highway damage caused by any disaster, not just floods. Under the bill, a "disaster" is defined as any of the following: 1) a severe storm, flood, fire, tornado, mudslide, or other natural event external to a highway; 2) the sudden failure of a major element or segment of the highway system due to a cause that is external to a highway; or 3) an event caused by any person acting under the direction or approval of, or permit issued by, any state governmental authority and in response to an event described in item 1) or 2), above. However, for damage caused by a disaster described in item 3), above, the amount of aid paid by DOT is 70 percent, rather than 75 percent, of the facilities, repair or replacement cost and no additional payment is available for the reconstruction of improved facilities. The bill also prohibits DOT from paying disaster damage aid in excess of \$1,000,000, in connection with disaster damage resulting from a single disaster, unless the payment of aid is approved by the governor.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.395 (1) (fs) of the statutes is amended to read:

2 20.395 (1) (fs) ~~Flood~~ Disaster damage aids, state funds. A sum sufficient to
3 make flood disaster damage aid payments under s. 86.34.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

4 **SECTION 2.** 83.015 (2) (b) of the statutes is amended to read:

5 83.015 (2) (b) In any county with a highway commissioner appointed under s.
6 83.01 (1) (b) or (c), the county highway committee shall be only a policy-making body
7 determining the broad outlines and principles governing administration and the
8 county highway commissioner shall have the administrative powers and duties
9 prescribed for the county highway committee under par. (a), sub. (3) (a) and ss.
10 27.065 (4) (b) and (13), 32.05 (1) (a), 82.08, 83.01 (6), 83.013, 83.018, 83.025 (1) and
11 (3), 83.026, 83.035, 83.04, 83.05 (1), 83.07 to 83.09, 83.12, 83.14 (6), 83.17, 83.18,
12 83.42 (3) and (4), 84.01 (5), 84.06 (3), 84.07 (1) and (2), 84.09 (1), (3) (a) to (c) and (4),
13 84.10 (1), 86.04 (1) and (2), 86.07 (2), 86.19 (3), 86.34 (1) (1m), 114.33 (5), 349.07 (2),

1 349.11 (4) and (10) and 349.15 (2). No statutory power, duty or function specified
2 elsewhere for the county highway commissioner may be deemed impliedly repealed
3 for the sole reason that reference to it has been omitted in this paragraph.

4 **SECTION 3.** 86.34 (title) of the statutes is amended to read:

5 **86.34 (title) Flood Disaster damage aids.**

6 **SECTION 4.** 86.34 (1) of the statutes is renumbered 86.34 (1m), and 86.34 (1m)
7 (a) and (b), as renumbered, are amended to read:

8 86.34 (1m) (a) When any ~~public highway, street, alley or bridge not on the state~~
9 ~~trunk highway system~~ is damaged by flood a disaster, the county highway
10 committee, or the governing body of the municipality having jurisdiction over the
11 maintenance ~~thereof of the highway~~, may adopt a petition for aid under this section
12 and file a certified copy ~~thereof of the petition~~ with the department. To be eligible
13 for aid the petition shall be filed not later than 2 months after the occurrence of the
14 flood disaster damage, except as provided in par. (b). All such petitions shall state
15 the dates on which the flood disaster damage occurred and as nearly as practical
16 state the location, nature, and extent of the damage.

17 (b) The department may extend the filing deadline under par. (a) if it appears
18 reasonably likely that federal disaster aid may be forthcoming or when widespread
19 or continuous ~~flooding~~ disaster damage makes an evaluation of flood damage
20 difficult.

21 **SECTION 5.** 86.34 (1g) of the statutes is created to read:

22 **86.34 (1g)** In this section:

23 (a) “Catastrophic highway failure” means the sudden failure of a major element
24 or segment of the highway system due to a cause that is external to a highway, but

1 does not include any failure primarily attributable to gradual and progressive
2 deterioration or lack of proper maintenance of a highway.

3 (b) "Disaster" means any of the following:

4 1. A severe storm, flood, fire, tornado, mudslide, or other natural event external
5 to a highway or a catastrophic highway failure.

6 2. An event caused by any ^{governmental unit or} person acting under the direction or approval of, or
7 permit issued by, any ^e ~~state~~ governmental ^{unit} ~~authority~~ and in response to an event
8 described in subd. 1. ^a as defined in s. 340.01(22), that is

9 (d) "Highway" means ^e ~~any public~~ highway, ~~street, alley, or bridge~~ not on the state
10 trunk highway system.

11 SECTION 6. 86.34 (2) of the statutes is amended to read:

12 86.34 (2) The department shall make such investigation as it deems necessary
13 and within 6 months from the date of filing the petition shall make its determination
14 as to the granting of aid, the amount thereof, and the conditions under which it is
15 granted. In making its determination the department shall cause an estimate to be
16 made of the cost of repairing or replacing the facilities damaged or destroyed by the
17 flood to standards and efficiency similar to those previously existing immediately
18 before the damage or destruction, and also an estimate of the cost of reconstructing
19 the facilities to a higher type or improving any such facilities if determined to be
20 warranted and advisable. Except as provided in ~~sub.~~ subs. (2m) and (6), the amount
21 of aid payable for damage caused by a disaster described in sub. (1g) (b) 1. shall be
22 ~~three-fourths~~ 75 percent of the cost of repair or replacement to standards similar to
23 those previously existing immediately before the damage or destruction, plus 50%
24 50 percent of the increased cost of the reconstruction to a higher type or the
25 improvement of any of the facilities. Except as provided in subs. (2m) and (6), the

1 amount of aid payable for damage caused by a disaster described in sub. (1g) (b) 2.
2 shall be 70 percent of the cost of repair or replacement to standards similar to those
3 existing immediately before the damage or destruction. The department may revise
4 estimates on the basis of additional facts. The county, town, village, or city shall pay
5 the remainder of the cost not allowed as aid, but this shall not invalidate any other
6 provision of the statutes whereby the cost may be shared by the county and the town,
7 village, or city.

8 **SECTION 7.** 86.34 (2m) of the statutes is amended to read:

9 86.34 (2m) If Subject to sub. (6), if the department's estimate under sub. (2) of
10 the cost of repair or improvement of the facilities determined by the department to
11 be eligible for aid is \$15,000 or less, the department shall offer the petitioner an
12 amount of aid equal to ~~75%~~ 75 percent of the total amount of the department's
13 estimate for damage caused by a disaster described in sub. (1g) (b) 1. or 70 percent
14 of the total amount of the department's estimate for damage caused by a disaster
15 described in sub. (1g) (b) 2. If the petitioner accepts aid under this subsection, the
16 aid shall be paid to the petitioner or, subject to sub. (5), the county, and no other form
17 of aid is available under this section for the repair or improvement of such facilities.

18 **SECTION 8.** 86.34 (6) of the statutes is created to read:

19 86.34 (6) The department may not pay aid under this section in excess of
20 \$1,000,000, in connection with disaster damage resulting from a single disaster,
21 unless the payment of aid is approved by the governor.

22 **SECTION 9345. Initial applicability; Transportation.**

23 (1) DISASTER AIDS. The treatment of sections 20.395 (1) (fs), 83.015 (2) (b), and
24 86.34 (title), (1), (1g), (2), (2m), and (6) of the statutes first applies to disasters, as

1 defined in section 86.34 (1g) (b) of the statutes, as created by this act, that occur on
2 the effective date of this subsection.

3 (END)

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1109/2ins
ARG:.....

INSERT 4-8:

(c) "Governmental unit" means the state or any state agency, as defined in s. 20.001 (1); any county, city, village, town, or other political subdivision of the state; or the federal government or any of its agencies.

Gary, Aaron

From: Byrnes, Tyler - DOA <Tyler.Byrnes@wisconsin.gov>
Sent: Saturday, January 26, 2013 12:09 PM
To: Gary, Aaron
Subject: RE: LRB-1109/2

You're correct – I do want it to apply to damage caused by both governments and persons acting on behalf of the governments.

Thanks.

From: Gary, Aaron [<mailto:Aaron.Gary@legis.wisconsin.gov>]
Sent: Saturday, January 26, 2013 11:56 AM
To: Byrnes, Tyler - DOA
Subject: RE: LRB-1109/2

Thanks Tyler. Our initial apps are worded in an odd way, but that is LRB protocol. You're correct at the end – “first applies that occur on 7/1/11” means everything that happens on or after that date. So that part should be good. However, your response makes me wonder if I have quite got it right. The way I drafted it applies only to governmental unit responses, not persons acting in response under direction/approval/permit of a governmental unit. Do you want me to broaden it to include these latter persons?

Thanks for your quick response. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Byrnes, Tyler - DOA [<mailto:Tyler.Byrnes@wisconsin.gov>]
Sent: Saturday, January 26, 2013 11:49 AM
To: Gary, Aaron
Subject: RE: LRB-1109/2

Aaron – That's the intent – this should apply to any “response-related damage” caused since July 1, 2011, subject to the rest of the criteria.

However, shouldn't the end of the last line be “have occurred since July 1, 2011”? So as to cover all disasters between July 1, 2011 and the effective date of the bill? It reads to me that only disasters that occurred on July 1, 2011 are eligible.

Although on second read, if you read the sentence without the qualifiers that I've put in the red parenthesis, it would read “...first applies to those disasters[qualifiers] that occur on July 1, 2011.” And that would it would apply to those disasters that happened July 1, 2011 and thereafter. So actually, if that's the correct way to read it, then I this does what I want.

Thanks,

Tyler

From: Gary, Aaron [<mailto:Aaron.Gary@legis.wisconsin.gov>]
Sent: Saturday, January 26, 2013 11:33 AM
To: Byrnes, Tyler - DOA
Subject: RE: LRB-1109/2

FYI, the language would look something like the following:

(1) Disaster aids. (a) The treatment of sections 20.395 (1) (fs), 83.015 (2) (b), and 86.34 (title), (1), (1g), (2), (2m), and (6) of the statutes first applies to disasters, as defined in section 86.34 (1g) (b) of the statutes, as created by this act, except those disasters described in paragraph (b), that occur on the effective date of this subsection.

NEW: (b) The treatment of sections 20.395 (1) (fs), 83.015 (2) (b), and 86.34 (title), (1), (1g), (2), (2m), and (6) of the statutes first applies to those disasters, (as defined in section 86.34 (1g) (b) 2. of the statutes, as created by this act, caused by governmental units in response to a disaster defined in section 86.34 (1g) (b) 1. of the statutes, as created by this act,) that occur on July 1, 2011.

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Gary, Aaron
Sent: Saturday, January 26, 2013 11:23 AM
To: Byrnes, Tyler - DOA
Subject: RE: LRB-1109/2

Hi Tyler,

So your intent is that this apply between 7/1/11 and the effective date of the bill?

If so, a non-stat to accomplish this will require a significant amount of verbiage. An alternative would be to modify the initial applicability language on p. 6 to cover these prior events. Do you want to try that?

Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Byrnes, Tyler - DOA [<mailto:Tyler.Byrnes@wisconsin.gov>]
Sent: Friday, January 25, 2013 1:33 PM
To: Gary, Aaron
Subject: LRB-1109/2

Aaron,

I'd like to make a change to LRB-1109/2.

I would like nonstatutory language added that allows repairs related to damage caused by a governmental response to a disaster, as under s. 86.42(1g)(b)(2.), stats, that happened after July 1, 2011, to be eligible for funding through these provisions. should still be subject to all other criteria that have been laid out in the draft.

Let me know if you have any questions.

Thanks,

Tyler.

PS



State of Wisconsin
2013 - 2014 LEGISLATURE

in
1/26



LRB-1109/11 3
ARG:jld:ph

PMR

DOA:.....Byrnes, BB0358 – Expand flood damage aids appropriation to cover other disasters

FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION

✓
1

do not gen
AN ACT ...; relating to: the budget. ✓

Analysis by the Legislative Reference Bureau

TRANSPORTATION

HIGHWAYS

Under current law, if a highway or bridge that is not on the state trunk highway system (highway) is damaged by flood, the county or municipality having jurisdiction over the highway may petition DOT for payment of flood damage aid. Upon receipt of a petition, DOT must make an investigation and determine whether to grant aid, the amount of the aid, and the conditions under which aid is granted. In making this determination, DOT must estimate the cost of repairing or replacing the facilities damaged or destroyed by the flood and must also estimate the cost of reconstructing improved facilities if warranted. The amount of aid paid by DOT is 75 percent of the repair or replacement cost and, if reconstructing improved facilities is warranted, an additional 50 percent of the increased cost resulting from the improvement. However, if DOT's estimate of the cost of repair or improvement of the facilities is \$15,000 or less, DOT must offer the petitioner an amount of aid equal to 75 percent of the total amount of DOT's cost estimate. Unless aid is payable based on DOT's cost estimate, DOT pays aid only after the county or municipality presents to DOT, and DOT approves, certified cost statements for the repair or improvement of the facilities. Flood damage aid payments are made by DOT from a sum sufficient appropriation from the transportation fund.

This bill allows DOT to use this process to pay aid for highway damage caused by any disaster, not just floods. Under the bill, a “disaster” is defined as any of the following: 1) a severe storm, flood, fire, tornado, mudslide, or other natural event external to a highway; 2) the sudden failure of a major element or segment of the highway system due to a cause that is external to a highway; or 3) an event caused by any governmental unit or person acting under the direction or approval of, or permit issued by, any governmental unit and in response to an event described in item 1) or 2), above. However, for damage caused by a disaster described in item 3), above, the amount of aid paid by DOT is 70 percent, rather than 75 percent, of the facilities, repair or replacement cost and no additional payment is available for the reconstruction of improved facilities. The bill also prohibits DOT from paying disaster damage aid in excess of \$1,000,000, in connection with disaster damage resulting from a single disaster, unless the payment of aid is approved by the governor.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.395 (1) (fs) of the statutes is amended to read:

2 20.395 (1) (fs) ~~Flood~~ Disaster damage aids, state funds. A sum sufficient to
3 make flood disaster damage aid payments under s. 86.34.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

4 **SECTION 2.** 83.015 (2) (b) of the statutes is amended to read:

5 83.015 (2) (b) In any county with a highway commissioner appointed under s.
6 83.01 (1) (b) or (c), the county highway committee shall be only a policy-making body
7 determining the broad outlines and principles governing administration and the
8 county highway commissioner shall have the administrative powers and duties
9 prescribed for the county highway committee under par. (a), sub. (3) (a) and ss.
10 27.065 (4) (b) and (13), 32.05 (1) (a), 82.08, 83.01 (6), 83.013, 83.018, 83.025 (1) and
11 (3), 83.026, 83.035, 83.04, 83.05 (1), 83.07 to 83.09, 83.12, 83.14 (6), 83.17, 83.18,
12 83.42 (3) and (4), 84.01 (5), 84.06 (3), 84.07 (1) and (2), 84.09 (1), (3) (a) to (c) and (4),

84.10 (1), 86.04 (1) and (2), 86.07 (2), 86.19 (3), 86.34 (1) (1m), 114.33 (5), 349.07 (2), 349.11 (4) and (10) and 349.15 (2). No statutory power, duty or function specified elsewhere for the county highway commissioner may be deemed impliedly repealed for the sole reason that reference to it has been omitted in this paragraph.

SECTION 3. 86.34 (title) of the statutes is amended to read:

86.34 (title) Flood Disaster damage aids.

SECTION 4. 86.34 (1) of the statutes is renumbered 86.34 (1m), and 86.34 (1m) (a) and (b), as renumbered, are amended to read:

86.34 (1m) (a) When any ~~public highway, street, alley or bridge not on the state trunk highway system~~ is damaged by flood a disaster, the county highway committee, or the governing body of the municipality having jurisdiction over the maintenance ~~thereof of the highway~~, may adopt a petition for aid under this section and file a certified copy ~~thereof of the petition~~ with the department. To be eligible for aid the petition shall be filed not later than 2 months after the occurrence of the ~~flood~~ disaster damage, except as provided in par. (b). All such petitions shall state the dates on which the ~~flood~~ disaster damage occurred and as nearly as practical state the location, nature, and extent of the damage.

(b) The department may extend the filing deadline under par. (a) if it appears reasonably likely that federal disaster aid may be forthcoming or when widespread or continuous ~~flooding~~ disaster damage makes an evaluation of ~~flood~~ damage difficult.

SECTION 5. 86.34 (1g) of the statutes is created to read:

86.34 (1g) In this section:

(a) “Catastrophic highway failure” means the sudden failure of a major element or segment of the highway system due to a cause that is external to a highway, but

1 does not include any failure primarily attributable to gradual and progressive
2 deterioration or lack of proper maintenance of a highway.

3 (b) “Disaster” means any of the following:

4 1. A severe storm, flood, fire, tornado, mudslide, or other natural event external
5 to a highway or a catastrophic highway failure.

6 2. An event caused by any governmental unit or person acting under the
7 direction or approval of, or permit issued by, any governmental unit and in response
8 to an event described in subd. 1.

9 (c) “Governmental unit” means the state or any state agency, as defined in s.
10 20.001 (1); any county, city, village, town, or other political subdivision of the state;
11 or the federal government or any of its agencies.

12 (d) “Highway” means a highway, as defined in s. 340.01 (22), that is not on the
13 state trunk highway system.

14 **SECTION 6.** 86.34 (2) of the statutes is amended to read:

15 86.34 (2) The department shall make such investigation as it deems necessary
16 and within 6 months from the date of filing the petition shall make its determination
17 as to the granting of aid, the amount thereof, and the conditions under which it is
18 granted. In making its determination the department shall cause an estimate to be
19 made of the cost of repairing or replacing the facilities damaged or destroyed by the
20 flood to standards and efficiency similar to those previously existing immediately
21 before the damage or destruction, and also an estimate of the cost of reconstructing
22 the facilities to a higher type or improving any such facilities if determined to be
23 warranted and advisable. Except as provided in ~~sub.~~ subs. (2m) and (6), the amount
24 of aid payable for damage caused by a disaster described in sub. (1g) (b) 1. shall be
25 ~~three-fourths~~ 75 percent of the cost of repair or replacement to standards similar to

1 those previously existing immediately before the damage or destruction, plus 50%
2 50 percent of the increased cost of the reconstruction to a higher type or the
3 improvement of any of the facilities. Except as provided in subs. (2m) and (6), the
4 amount of aid payable for damage caused by a disaster described in sub. (1g) (b) 2.
5 shall be 70 percent of the cost of repair or replacement to standards similar to those
6 existing immediately before the damage or destruction. The department may revise
7 estimates on the basis of additional facts. The county, town, village, or city shall pay
8 the remainder of the cost not allowed as aid, but this shall not invalidate any other
9 provision of the statutes whereby the cost may be shared by the county and the town,
10 village, or city.

11 **SECTION 7.** 86.34 (2m) of the statutes is amended to read:

12 86.34 (2m) If Subject to sub. (6), if the department's estimate under sub. (2) of
13 the cost of repair or improvement of the facilities determined by the department to
14 be eligible for aid is \$15,000 or less, the department shall offer the petitioner an
15 amount of aid equal to ~~75%~~ 75 percent of the total amount of the department's
16 estimate for damage caused by a disaster described in sub. (1g) (b) 1. or 70 percent
17 of the total amount of the department's estimate for damage caused by a disaster
18 described in sub. (1g) (b) 2. If the petitioner accepts aid under this subsection, the
19 aid shall be paid to the petitioner or, subject to sub. (5), the county, and no other form
20 of aid is available under this section for the repair or improvement of such facilities.

21 **SECTION 8.** 86.34 (6) of the statutes is created to read:

22 86.34 (6) The department may not pay aid under this section in excess of
23 \$1,000,000, in connection with disaster damage resulting from a single disaster,
24 unless the payment of aid is approved by the governor.

25 **SECTION 9345. Initial applicability; Transportation.**

4(a)

1 (1) DISASTER AIDS. The treatment of sections 20.395 (1) (fs), 83.015 (2) (b), and
2 86.34 (title), (1), (1g), (2), (2m), and (6) of the statutes first applies to disasters, as
3 defined in section 86.34 (1g) (b) of the statutes, as created by this act, that occur on
4 the effective date of this subsection.

5 (END)

insert
6-5

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1109/3ins
ARG:.....

1

2

3

INSERT 6-5:

④ LPS-
check
5 component → (b) The treatment of sections 20.395 (1) (fs), 83.015 (2) (b), and 86.34 (title), (1),
(1g), (2), (2m), and (6) of the statutes first applies to disasters, as defined in section
6 86.34 (1g) (b) 2. of the statutes, as created by this act, that occur on July 1, 2011.
7



State of Wisconsin
2013 - 2014 LEGISLATURE

in
2/4



LRB-110914
ARG:jld:rs

(RMR)

DOA:.....Byrnes, BB0358 – Expand flood damage aids appropriation to cover other disasters

FOR 2013-2015 BUDGET – NOT READY FOR INTRODUCTION

2/4 H/c w/ Tyler – make this change – disaster response may occur over a period of time

✓ do not gen ✓
1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TRANSPORTATION

HIGHWAYS

Under current law, if a highway or bridge that is not on the state trunk highway system (highway) is damaged by flood, the county or municipality having jurisdiction over the highway may petition DOT for payment of flood damage aid. Upon receipt of a petition, DOT must make an investigation and determine whether to grant aid, the amount of the aid, and the conditions under which aid is granted. In making this determination, DOT must estimate the cost of repairing or replacing the facilities damaged or destroyed by the flood and must also estimate the cost of reconstructing improved facilities if warranted. The amount of aid paid by DOT is 75 percent of the repair or replacement cost and, if reconstructing improved facilities is warranted, an additional 50 percent of the increased cost resulting from the improvement. However, if DOT's estimate of the cost of repair or improvement of the facilities is \$15,000 or less, DOT must offer the petitioner an amount of aid equal to 75 percent of the total amount of DOT's cost estimate. Unless aid is payable based on DOT's cost estimate, DOT pays aid only after the county or municipality presents to DOT, and DOT approves, certified cost statements for the repair or improvement of the facilities. Flood damage aid payments are made by DOT from a sum sufficient appropriation from the transportation fund.

or recurring damage ✓

* This bill allows DOT to use this process to pay aid for highway damage caused by any disaster, not just floods. Under the bill, a "disaster" is defined as any of the following: 1) a severe storm, flood, fire, tornado, mudslide, or other natural event external to a highway; 2) the sudden failure of a major element or segment of the highway system due to a cause that is external to a highway; or 3) an event caused by any governmental unit or person acting under the direction or approval of, or permit issued by, any governmental unit and in response to an event described in item 1) or 2), above. However, for damage caused by a disaster described in item 3), above, the amount of aid paid by DOT is 70 percent, rather than 75 percent, of the facilities, repair or replacement cost and no additional payment is available for the reconstruction of improved facilities. The bill also prohibits DOT from paying disaster damage aid in excess of \$1,000,000, in connection with disaster damage resulting from a single disaster, unless the payment of aid is approved by the governor.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.395 (1) (fs) of the statutes is amended to read:

2 20.395 (1) (fs) ~~Flood~~ Disaster damage aids, state funds. A sum sufficient to
3 make ~~flood~~ disaster damage aid payments under s. 86.34.

 ***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

4 **SECTION 2.** 83.015 (2) (b) of the statutes is amended to read:

5 83.015 (2) (b) In any county with a highway commissioner appointed under s.
6 83.01 (1) (b) or (c), the county highway committee shall be only a policy-making body
7 determining the broad outlines and principles governing administration and the
8 county highway commissioner shall have the administrative powers and duties
9 prescribed for the county highway committee under par. (a), sub. (3) (a) and ss.
10 27.065 (4) (b) and (13), 32.05 (1) (a), 82.08, 83.01 (6), 83.013, 83.018, 83.025 (1) and
11 (3), 83.026, 83.035, 83.04, 83.05 (1), 83.07 to 83.09, 83.12, 83.14 (6), 83.17, 83.18,
12 83.42 (3) and (4), 84.01 (5), 84.06 (3), 84.07 (1) and (2), 84.09 (1), (3) (a) to (c) and (4),

84.10 (1), 86.04 (1) and (2), 86.07 (2), 86.19 (3), 86.34 (1) (1m), 114.33 (5), 349.07 (2), 349.11 (4) and (10) and 349.15 (2). No statutory power, duty or function specified elsewhere for the county highway commissioner may be deemed impliedly repealed for the sole reason that reference to it has been omitted in this paragraph.

SECTION 3. 86.34 (title) of the statutes is amended to read:

86.34 (title) Flood Disaster damage aids.

SECTION 4. 86.34 (1) of the statutes is renumbered 86.34 (1m), and 86.34 (1m) (a) and (b), as renumbered, are amended to read:

86.34 (1m) (a) When any ~~public highway, street, alley or bridge not on the state trunk highway system~~ is damaged by flood a disaster, the county highway committee, or the governing body of the municipality having jurisdiction over the maintenance ~~thereof of the highway~~, may adopt a petition for aid under this section and file a certified copy ~~thereof of the petition~~ with the department. To be eligible for aid the petition shall be filed not later than 2 months after the occurrence of the ~~flood disaster~~ damage, except as provided in par. (b). All such petitions shall state the dates on which the flood disaster damage occurred and as nearly as practical state the location, nature, and extent of the damage.

(b) The department may extend the filing deadline under par. (a) if it appears reasonably likely that federal disaster aid may be forthcoming or when widespread or continuous ~~flood~~ disaster damage makes an evaluation of ~~flood~~ damage difficult.

SECTION 5. 86.34 (1g) of the statutes is created to read:

86.34 (1g) In this section:

(a) “Catastrophic highway failure” means the sudden failure of a major element or segment of the highway system due to a cause that is external to a highway, but

1 does not include any failure primarily attributable to gradual and progressive
2 deterioration or lack of proper maintenance of a highway.

3 (b) "Disaster" means any of the following:

4 1. A severe storm, flood, fire, tornado, mudslide, or other natural event external
5 to a highway or a catastrophic highway failure.

6 2. An event ^{or recurring damage} caused by any governmental unit or person acting under the
7 direction or approval of, or permit issued by, any governmental unit and in response
8 to an event described in subd. 1.

9 (c) "Governmental unit" means the state or any state agency, as defined in s.
10 20.001 (1); any county, city, village, town, or other political subdivision of the state;
11 or the federal government or any of its agencies.

12 (d) "Highway" means a highway, as defined in s. 340.01 (22), that is not on the
13 state trunk highway system.

14 **SECTION 6.** 86.34 (2) of the statutes is amended to read:

15 86.34 (2) The department shall make such investigation as it deems necessary
16 and within 6 months from the date of filing the petition shall make its determination
17 as to the granting of aid, the amount thereof, and the conditions under which it is
18 granted. In making its determination the department shall cause an estimate to be
19 made of the cost of repairing or replacing the facilities damaged or destroyed by the
20 flood to standards and efficiency similar to those previously existing immediately
21 before the damage or destruction, and also an estimate of the cost of reconstructing
22 the facilities to a higher type or improving any such facilities if determined to be
23 warranted and advisable. Except as provided in ~~sub. subs.~~ (2m) and (6), the amount
24 of aid payable for damage caused by a disaster described in sub. (1g) (b) 1. shall be
25 ~~three-fourths~~ 75 percent of the cost of repair or replacement to standards similar to

1 those previously existing immediately before the damage or destruction, plus 50%
2 50 percent of the increased cost of the reconstruction to a higher type or the
3 improvement of any of the facilities. Except as provided in subs. (2m) and (6), the
4 amount of aid payable for damage caused by a disaster described in sub. (1g) (b) 2.
5 shall be 70 percent of the cost of repair or replacement to standards similar to those
6 existing immediately before the damage or destruction. The department may revise
7 estimates on the basis of additional facts. The county, town, village, or city shall pay
8 the remainder of the cost not allowed as aid, but this shall not invalidate any other
9 provision of the statutes whereby the cost may be shared by the county and the town,
10 village, or city.

11 **SECTION 7.** 86.34 (2m) of the statutes is amended to read:

12 86.34 (2m) If Subject to sub. (6), if the department's estimate under sub. (2) of
13 the cost of repair or improvement of the facilities determined by the department to
14 be eligible for aid is \$15,000 or less, the department shall offer the petitioner an
15 amount of aid equal to ~~75%~~ 75 percent of the total amount of the department's
16 estimate for damage caused by a disaster described in sub. (1g) (b) 1. or 70 percent
17 of the total amount of the department's estimate for damage caused by a disaster
18 described in sub. (1g) (b) 2. If the petitioner accepts aid under this subsection, the
19 aid shall be paid to the petitioner or, subject to sub. (5), the county, and no other form
20 of aid is available under this section for the repair or improvement of such facilities.

21 **SECTION 8.** 86.34 (6) of the statutes is created to read:

22 86.34 (6) The department may not pay aid under this section in excess of
23 \$1,000,000, in connection with disaster damage resulting from a single disaster,
24 unless the payment of aid is approved by the governor.

25 **SECTION 9345. Initial applicability; Transportation.**

(1) DISASTER AIDS.

(a) The treatment of sections 20.395 (1) (fs), 83.015 (2) (b), and 86.34 (title), (1), (1g), (2), (2m), and (6) of the statutes first applies to disasters, as defined in section 86.34 (1g) (b) 1. of the statutes, as created by this act, that occur on the effective date of this subsection.

(b) The treatment of sections 20.395 (1) (fs), 83.015 (2) (b), and 86.34 (title), (1), (1g), (2), (2m), and (6) of the statutes first applies to disasters, as defined in section 86.34 (1g) (b) 2. of the statutes, as created by this act, that occur on July 1, 2011.

(END)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1109/4
ARG:jld:rs

DOA:.....Byrnes, BB0358 – Expand flood damage aids appropriation to cover other disasters

FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

TRANSPORTATION

HIGHWAYS

Under current law, if a highway or bridge that is not on the state trunk highway system (highway) is damaged by flood, the county or municipality having jurisdiction over the highway may petition DOT for payment of flood damage aid. Upon receipt of a petition, DOT must make an investigation and determine whether to grant aid, the amount of the aid, and the conditions under which aid is granted. In making this determination, DOT must estimate the cost of repairing or replacing the facilities damaged or destroyed by the flood and must also estimate the cost of reconstructing improved facilities if warranted. The amount of aid paid by DOT is 75 percent of the repair or replacement cost and, if reconstructing improved facilities is warranted, an additional 50 percent of the increased cost resulting from the improvement. However, if DOT's estimate of the cost of repair or improvement of the facilities is \$15,000 or less, DOT must offer the petitioner an amount of aid equal to 75 percent of the total amount of DOT's cost estimate. Unless aid is payable based on DOT's cost estimate, DOT pays aid only after the county or municipality presents to DOT, and DOT approves, certified cost statements for the repair or improvement of the facilities. Flood damage aid payments are made by DOT from a sum sufficient appropriation from the transportation fund.

This bill allows DOT to use this process to pay aid for highway damage caused by any disaster, not just floods. Under the bill, a "disaster" is defined as any of the following: 1) a severe storm, flood, fire, tornado, mudslide, or other natural event external to a highway; 2) the sudden failure of a major element or segment of the highway system due to a cause that is external to a highway; or 3) an event or recurring damage caused by any governmental unit or person acting under the direction or approval of, or permit issued by, any governmental unit and in response to an event described in item 1) or 2), above. However, for damage caused by a disaster described in item 3), above, the amount of aid paid by DOT is 70 percent, rather than 75 percent, of the facilities, repair or replacement cost and no additional payment is available for the reconstruction of improved facilities. The bill also prohibits DOT from paying disaster damage aid in excess of \$1,000,000, in connection with disaster damage resulting from a single disaster, unless the payment of aid is approved by the governor.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.395 (1) (fs) of the statutes is amended to read:

2 20.395 (1) (fs) *Flood Disaster* damage aids, state funds. A sum sufficient to
3 make flood disaster damage aid payments under s. 86.34.

 ***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

4 **SECTION 2.** 83.015 (2) (b) of the statutes is amended to read:

5 83.015 (2) (b) In any county with a highway commissioner appointed under s.
6 83.01 (1) (b) or (c), the county highway committee shall be only a policy-making body
7 determining the broad outlines and principles governing administration and the
8 county highway commissioner shall have the administrative powers and duties
9 prescribed for the county highway committee under par. (a), sub. (3) (a) and ss.
10 27.065 (4) (b) and (13), 32.05 (1) (a), 82.08, 83.01 (6), 83.013, 83.018, 83.025 (1) and
11 (3), 83.026, 83.035, 83.04, 83.05 (1), 83.07 to 83.09, 83.12, 83.14 (6), 83.17, 83.18,
12 83.42 (3) and (4), 84.01 (5), 84.06 (3), 84.07 (1) and (2), 84.09 (1), (3) (a) to (c) and (4),

84.10 (1), 86.04 (1) and (2), 86.07 (2), 86.19 (3), 86.34 (1) (1m), 114.33 (5), 349.07 (2), 349.11 (4) and (10) and 349.15 (2). No statutory power, duty or function specified elsewhere for the county highway commissioner may be deemed impliedly repealed for the sole reason that reference to it has been omitted in this paragraph.

SECTION 3. 86.34 (title) of the statutes is amended to read:

86.34 (title) Flood Disaster damage aids.

SECTION 4. 86.34 (1) of the statutes is renumbered 86.34 (1m), and 86.34 (1m) (a) and (b), as renumbered, are amended to read:

86.34 (1m) (a) When any ~~public highway, street, alley or bridge not on the state trunk highway system~~ is damaged by flood a disaster, the county highway committee, or the governing body of the municipality having jurisdiction over the maintenance ~~thereof of the highway~~, may adopt a petition for aid under this section and file a certified copy ~~thereof of the petition~~ with the department. To be eligible for aid the petition shall be filed not later than 2 months after the occurrence of the flood disaster damage, except as provided in par. (b). All such petitions shall state the dates on which the flood disaster damage occurred and as nearly as practical state the location, nature, and extent of the damage.

(b) The department may extend the filing deadline under par. (a) if it appears reasonably likely that federal disaster aid may be forthcoming or when widespread or continuous ~~flooding~~ disaster damage makes an evaluation of flood damage difficult.

SECTION 5. 86.34 (1g) of the statutes is created to read:

86.34 (1g) In this section:

(a) “Catastrophic highway failure” means the sudden failure of a major element or segment of the highway system due to a cause that is external to a highway, but

1 does not include any failure primarily attributable to gradual and progressive
2 deterioration or lack of proper maintenance of a highway.

3 (b) “Disaster” means any of the following:

4 1. A severe storm, flood, fire, tornado, mudslide, or other natural event external
5 to a highway or a catastrophic highway failure.

6 2. An event or recurring damage caused by any governmental unit or person
7 acting under the direction or approval of, or permit issued by, any governmental unit
8 and in response to an event described in subd. 1.

9 (c) “Governmental unit” means the state or any state agency, as defined in s.
10 20.001 (1); any county, city, village, town, or other political subdivision of the state;
11 or the federal government or any of its agencies.

12 (d) “Highway” means a highway, as defined in s. 340.01 (22), that is not on the
13 state trunk highway system.

14 **SECTION 6.** 86.34 (2) of the statutes is amended to read:

15 86.34 (2) The department shall make such investigation as it deems necessary
16 and within 6 months from the date of filing the petition shall make its determination
17 as to the granting of aid, the amount thereof, and the conditions under which it is
18 granted. In making its determination the department shall cause an estimate to be
19 made of the cost of repairing or replacing the facilities damaged or destroyed ~~by the~~
20 ~~flood~~ to standards and efficiency similar to those ~~previously existing~~ immediately
21 before the damage or destruction, and also an estimate of the cost of reconstructing
22 the facilities to a higher type or improving any such facilities if determined to be
23 warranted and advisable. Except as provided in ~~sub. subs. (2m) and (6)~~, the amount
24 of aid payable for damage caused by a disaster described in sub. (1g) (b) 1. shall be
25 ~~three-fourths~~ 75 percent of the cost of repair or replacement to standards similar to

1 those previously existing immediately before the damage or destruction, plus 50%
2 50 percent of the increased cost of the reconstruction to a higher type or the
3 improvement of any of the facilities. Except as provided in subs. (2m) and (6), the
4 amount of aid payable for damage caused by a disaster described in sub. (1g) (b) 2.
5 shall be 70 percent of the cost of repair or replacement to standards similar to those
6 existing immediately before the damage or destruction. The department may revise
7 estimates on the basis of additional facts. The county, town, village, or city shall pay
8 the remainder of the cost not allowed as aid, but this shall not invalidate any other
9 provision of the statutes whereby the cost may be shared by the county and the town,
10 village, or city.

11 **SECTION 7.** 86.34 (2m) of the statutes is amended to read:

12 86.34 (2m) If Subject to sub. (6), if the department's estimate under sub. (2) of
13 the cost of repair or improvement of the facilities determined by the department to
14 be eligible for aid is \$15,000 or less, the department shall offer the petitioner an
15 amount of aid equal to ~~75%~~ 75 percent of the total amount of the department's
16 estimate for damage caused by a disaster described in sub. (1g) (b) 1. or 70 percent
17 of the total amount of the department's estimate for damage caused by a disaster
18 described in sub. (1g) (b) 2. If the petitioner accepts aid under this subsection, the
19 aid shall be paid to the petitioner or, subject to sub. (5), the county, and no other form
20 of aid is available under this section for the repair or improvement of such facilities.

21 **SECTION 8.** 86.34 (6) of the statutes is created to read:

22 86.34 (6) The department may not pay aid under this section in excess of
23 \$1,000,000, in connection with disaster damage resulting from a single disaster,
24 unless the payment of aid is approved by the governor.

25 **SECTION 9345. Initial applicability; Transportation.**

(1) **DISASTER AIDS.**

(a) The treatment of sections 20.395 (1) (fs), 83.015 (2) (b), and 86.34 (title), (1), (1g), (2), (2m), and (6) of the statutes first applies to disasters, as defined in section 86.34 (1g) (b) 1. of the statutes, as created by this act, that occur on the effective date of this subsection.

(b) The treatment of sections 20.395 (1) (fs), 83.015 (2) (b), and 86.34 (title), (1), (1g), (2), (2m), and (6) of the statutes first applies to disasters, as defined in section 86.34 (1g) (b) 2. of the statutes, as created by this act, that occur on July 1, 2011.

(END)